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H – 1247

International Court of Justice

Funk
Engl.
Sauter

Nuernberg, 26 June 1946

D r. W a l t e r F u n k.

I have the task to examine the case of the defendant Dr. Walter Funk, that is to say, I am to deal with a topic which unfortunately is especially dry and prosaic.

I. General.

The total course of this trial and the particular evidence offered in his own case have proven that the defendant Funk, at no time of the National Socialist regime and in none of the cases indicted here, played a de c i s i v e role.

F u n k s a u t h o r i t y o f d e c i s i o n w a s a l w a y s l i m i t e d b y s u p e r i o r p o w e r o f a u t h o r i t y. The statement of the defendant during his personal examination, that he was allowed to proceed as far as to the door, but was never permitted to enter, has been proven by the evidence to be quite correct.

In the party Funk was entrusted with several tasks only during the last year prior to the seizure of power, that is in 1932. These however were of no practical significance, as they were of short duration.

F r o m t h e s e i z u r e o f p o w e r on F u n k w a s n e v e r a p p o i n t e d t o a n o f f i c e i n t h e p a r t y. He was never a member of any party organisation, neither of the SS nor the SA nor of the corps of political leaders. Funk held a R e i c h s t a g - M a n d a t e only for the brief space of slightly more than six months prior to seizure of power. Consequently he was not a member of the Reichstag at the time when the fundamental laws for the consolidation of National Socialist power were passed.

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The laws of that time, especially the Enabling Act, presented under 2962 PS and 2963 PS, with the responsibility for which Funk is also charged, were accepted by the Reichs-Cabinet at a time, when Funk was not yet a member of the Cabinet. He became a member only at the close of 1937, by virtue of his appointment as Minister of Economy (Reichswirtschaftsminister), that is at a time when Cabinet sessions took no longer place. Funk - as press chief of the Reich - Cabinet - had neither a seat nor a vote in the cabinet and could not exert any influence whatsoever upon the contents of the bills. (Statement of Lammers, on pages 7394 and 7395 of the official transcript of 8 April 1946)
The same applies to racial laws, the so-called Nuernberg laws.

Funk had closer relations to the Fuehrer only during the period of 1½ years, in which he held regular press conferences at Hitler's in his capacity as Press- chief of the Reich-Cabinet from February 1933 through August 1934, that is up to the death of Reich President von Hindenburg. Later, Funk met Hitler only very rarely. The witness Dr. Lammers in this respect states the following : Later he, (Funk) in his capacity as Reich Minister of Economy came to see Hitler only extremely rarely. He was not consulted in many conferences, conferences at which he should have been consulted. He complained to me about this frequently. The Fuehrer often raised objections. There were various reasons against Funk, He viewed Funk sceptically and did not want him. (page 7398 of the official transcript of 8 April 1946). Upon the question to the witness Dr. Lammers whether Funk had often expressed to him his grief about his unsatisfactory position as a Reich Minister for Economy and about his anxietey weighing heavily upon him due to the general conditions, Dr. Lammers replied: I know that Funk had great worries

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and he was looking for an opportunity to discuss these with the Fuehrer. He had the fervent desire to have a discurse with the Fuehrer in order to be at least partially informed about the war situation. (That was in 1943 and 1944)."
With the best will, it was not possible for Funk to be received by the Fuehrer and it was not possible for me to get him to the Fuehrer." (pages 7401 and 7402 of the official (German) transcript of the afternoon of 8 April 1946).
Funk, for the striking fact that during all his ministerial activity he was called to the Fuehrer conferences b u t f o u r o r f i v e t i m e s , gives the explanation that Hitler did not need him. Hitler, up to 1942, issued his instructions in economic affairs to Goering, who, in his capacity as Plenipotentiary for the Four-Year-Plan, was responsible for the entire economy and, from the beginning of 1942, to Speer, who as Armament Minister, upon the grant of special authority could issue directives to all branches of production and who as of 1943 personally directed the e n t i r production.

T h e r e f o r e Funk n e v e r p l a y e d t h e m a i n p a r t b u t r a t h e r a s u b a l t e r r o l e i n t h e e c o n o m y o f t h e N a t i o n a l S o c i a l i s t R e i c h . The co-defendant Goering specifically verifies this in his statement of 15 March (page 6009 of the official German transcript)with the following words:By reason of the special authorities vested in me, he, Funk, certainly had to follow my instructions of economic nature in the sphere of the Ministry of Economy and of the Reichsbank."I f u l l y a n d e x c l u s i v e l y a s s u m e r e s p o n s i b i l i t y f o r a n y i n s t r u c t i o n s , i s s u e d b y a n d a n y e c o n o m i c p o l i c y e x e c u t e d b y F u n k i n h i s c a p a c i t y a s t h e R e i c h - M i n i s t e r f o r E c o n o m y a n d P r e s i d e n t o f t h e R e i c h s b a n k ."

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In the session of 20 June even the defendant Speer, as witness declared, that in his capacity as Armament Minister he claimed for himself from the very beginning any authority of decision in the most important economical spheres, such as coal, iron and steel, metal, aluminum and production of machinery. The entire management of energy and the total building program prior to Speer's commissioning at the beginning of 1942 was under the jurisdiction of Armament Minister Todt.

The evidence submitted by the prosecution in the case of defendant Funk, does not for the greater part bear on personal acts of Funk or instructions issued by him but it bears rather on the various and manifold positions he occupied. On page 29 of the trial brief the prosecutor himself declares that the argument offered against Funk may be said to be inferential. The prosecution starts from the assumption that Funk, upon the basis of the many positions held by him, must have had knowledge of the various happenings, which are the subject of the accusation. The indictment refers, broadly spoken, to instructions and directives, issued by Funk personally only where the decrees of execution, issued by Funk for the carrying out of the Four-Year-Plan for the elimination of Jews from the economic life in November 1938, were concerned. This chapter will have to be dealt with separately. At political and military conferences, Funk was not consulted. His position was one of a ministerial expert with far narrow limitations on authority of decisions.

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As Reich-Minister for Economy Funk was subordinated to the Four-Year-Plan. Later the Armament Minister had superior authorities. And finally, as was proven by the testimony of witnesses Goering, Lammers and Hayler, the Ministry for Economy assumed the state of a r e g u l a r T r a d e - M i n i s t r y , which dealt essentially with the distribution of the consumer goods production and with technical problems in carrying out Foreign trade.

The Four-Year-Plan determined the use of g o l d a n d f o r e i g n c u r r e n c y i n t h e R e i c h s b a n k The decision about the amount of credits to be granted to the Reich with respect to the i n t e r n a l f i n a n c i n g o f t h e w a r was taken away from the Reichsbank at the time of Funk's assuming office as Reichsbank president . Thereby Funk is exonerated of any responsibility in the financing of the war. The responsible agency herefore was always the R e i c h - F i n a n c e - M i n i s t e r .

Finally, as G e n e r a l P l e n i p o t e n t i a r y f o r E c o n o m y Funk's task in August 1939 solely existed in coordinating civil agencies of economy for such measures as would guarantee a smooth reconversion from peace to wartime economy. The result of these consultations were the proposals which Funk presented t o H i t l e r on 25 August 1939 in t h e l e t t e r which has been quoted several times under 699 PS, GB Exhibit 49. At his examination Funk stated, that this letter did not portray matters correctly, since it was a purely private letter, a letter of appreciation for Hitler's birthday congratulations. This point will have to be taken up again later, since the prosecution especially emphasized the position of Funk as General Plenipotentiary for Economy.

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Evidence shows that this was the most disputed but also the weakest position of Funk. With regard to the occupied territories Funk had no decisive authority whatsoever. This was demonstrated by all witnesses interrogated regarding this question. But all witnesses equally confirmed that Funk always turned against the pillage of the occupied territories. He fought against the purchases in the black markets, he was against abolishing the foreign exchange regulations in connection with Holland, by which measure the German purchases in Holland were to be facilitated, he organized export to Greece from Germany and from the Eastern European states and even sent gold there. (compare testimony of Dr. Neubacher). He repeatedly rose against overburdening the occupied territories financially, especially in 1942 and 1944 against raising the occupation costs in France. He defended the currency of the occupied countries against repeating attempts of devaluation. In the case of Denmark he achieved even in spite of all opposition, a revalorization. Furthermore Funk fought an arbitrary stabilization of exchange on the occasion of currency regulations in occupied countries. Germany's clearing debt was always recognized by Funk as legitimate commercial debt also with regard to the occupied countries. This is shown especially by his proposal to commercialize this clearing debt by a loan by Germany issued for subscription in all European countries. Funk was opposed to too strong and compulsory employment of foreign labor in Germany.

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This was also testified by the defendant S a u c k e l at his interrogation here. All these facts, favourably affecting the occupied countries were confirmed by the witnesses H a y l e r, L a n d f r i e d, P u h l, N e u b a c h e r, and S e y s s - I n q u a r t.
According to these statements Funk always strove to keep order in the economic and social life of the occupied territories and protect them from shocks and disturbances. H e a l w a y s w a s o p p o s e d and d i s i n c l i n e d t o r a d i c a l and a r b i t r a r y m e a s u r e s. H e r a t h e r w a s i n favour of a g r e e m e n t and c o m p r o m i s e s. Even during the war Funk always thought of peace. This was stated by the witnesses Landfried and Hayler and they added that Funk was repeatedly reproached for his attitude by the leading states and party offices. Also the defendant S p e e r testified at his interrogation that Funk, during the war, had occupied too many workers in the consumer goods economy and that this was a reason that Funk had to give up the management of the consumer goods production in 1943.

That F u n k the same as S p e e r has revolted against the horrible " s c o r c h e d e a r t h " policy has been proved to the Court beside by Speer himself also by the witness H a y l e r on 7 May 1946. This witness declared that he never saw Funk so upset as in that moment when he was informed of this order for destruction. Funk gave directions, as Hayler had testified, as Reichswirtschaftsminister (minister for Reich economy) as well as Reichsbankpraesident (President of the Reichs bank) to protect the warehouses from the ordered destruction and to assure the supply of commodities necessary for the life of the population, also the currency transactions in the territories which were abandoned.

Funk's e c o n o m i c p o l i t i c a l g o a l,

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one may, indeed, say, the contents of his lifework was a European economic community on the basis of just and natural balance of interests of the sovereign countries. Relentlessly even during the war he strove to reach this goal, although the elementary war necessities and the developments brought on by the war naturally hindered these efforts everywhere. The economic Europe as Funk saw and endeavoured to see it, was impressively represented by him in some major economic-political speeches. Extracts from some of these speeches, often also recognized in neutral and enemy countries, are contained in Document Book Funk No. 9, 10 and 11.

When reviewing the acts of the defendant his whole personality naturally plays a role if the motives from which this defendant acted are to be ascertained. The German people looked upon Funk, that is as far as he was known, never as a Party man who would be capable of participating in brutal outrages, violence and terror or to amass fortunes at the cost of others. He rather shared his preference for art and literature with his friend Baldur von Schirach. Originally he wanted to became a musician and in later times he much rather saw in his house poets and artists than the men from the Party and the State. In professional circles he was known and considered as an economist, as a man with an extensive theoretical and historical knowledge who rose from journalism and was a brilliant stylist. He had an economically secure position as chief editor with the distinguished "Berliner Boersen Zeitung" so that

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he deprived himself financially when he accepted the office of press chief in the Reich Cabinet at the begin of 1933 a f t e r Hitler's assumption of power. Therefore he was not one of those desperadoes who had to be glad to get into a well paid position through Hitler. On the contrary, he brought a financial sacrifice when he took over the state office offered to him and therefore it seems entirely credible that he did this out of patriotism, a sense of duty toward his people, to put himself at the service of the country during hard times of distress. To judge the personality and character of defendant Funk it is further of some importance that he never held or strove toward any rank in the P a r t y . Other people who took over high state offices in the Third Reich were, for example, bestowed with the title of a SS-Gruppenfuehrer or given the rank of a SA-Obergruppenfuehrer. Funk on the contrary, was from 1931 until the end of the Third Reich only a plain Party member, although he took pains for a scrupulous management of his state offices he endeavoured no honours in the Party whatsoever. The only thing the defendant Funk was reproached on in this connection was the fact that he accepted an e n d o w m e n t in 1940 to his 50th birthday. That in itself of course was no punishable act, but was evidently valued by the tribunal as a moral charge against the defendant. Therefore we shall define our position with regard to this briefly. We remember how this endowment came about: The president and board of the Reich Chamber of Economy (Reichswirtschaftkammer), that is the highest representatives of German economic life, presented him to his 50th birthday with a farm of 55 hectars in Upper Bavaria. This estate, of course, existed for the time being only on the paper of the presentation document and had to be erected first. This presentation was

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expressively approved by the Head of State, Adolf Hitler, therefore not made secretly to the Reich Minister of Economy but in all official form without anything being suppressed or concealed. The gift consequently turned out to be for Funk a fatal one, because the construction of the building was much more expensive as was expected and because Funk had to pay a very high gift tax. Funk, who until then never had any debts and always lived in regulated conditions, came now because of this "donation" of an estate into debts; Goering, who heard about this helped Funk out with a generous sum. When Hitler heard through Minister Lammers, of Funk's financial difficulties, he had transferred to him as endowment, the cash necessary for the arrangement of his economic affairs. With that Funk was able to pay his taxes and his debts. The rest was used by Funk to donate two public establishments, one for the dependants of the officials of the Reichsbank killed in action, the other for the personnel of the Ministry of Economy for the same purpose. The estate too was to be a donation some day. Thus Funk demonstrated that he had tact also in this point. Even though such an endowment cannot be legally disputed he had in his finger tips [illegible] that it is more correct to distance oneself from such endowments and to give them rather to public uses, as the gift could not possibly be turned down flatly considering it came from the head of the state. Henceforth I wish to turn toward the c r i m i n a l responsibility of the defendant Funk on the individual points of accusation.

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II. Support of the seizure of power by the Party.

(party activity 1931/32)

The defendant Funk is supposed to have promoted the seizure of power by the conspirators. This point of the indictment deals with the activity of the defendant Funk from the time when he joined the party in June 1931 until the seizure of power on 30 January 1933. The indictment maintains that Funk through interceding for the Party during that time, had expedited the seizure of power by the National Socialists. This is correct. The defendant Funk himself during his interrogation on 4 May, declared and explained in detail that he considered the seizure of the ruling power by the National Socialists the only possibility for the deliverance of the German people from the grave, intellectual, economical, and social distress of that time. The economic program of the Party was in his opinion, vague and mainly designated for propaganda. He himself wanted to bring to bear his own economic principles in order to work through the Party for the benefit of the German people. Funk described this view point to the court in detail during his examination. It is based on the idea of private property which is inseparable from the perception of the differentiation of human efficiency. Funk demanded the acknowledgment of private initiative and of the responsibility of the creative entrepreneur, free competition and a balancing of social contrasts. He aimed at the elimination of party and class warfare

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at a strong government with full authority and responsibility and at a uniform political will of the people. Through his conversations with Adolf Hitler and with other party leaders he became convinced that the Party positively recognized these principles and ideas of his. In Funk's opinion he cannot be blamed for his support of the Party in its struggle for power. Funk believes that, expecially the discussions in this trial furnished absolute proof that the Party came to power a b s o l u t e l y l e g a l l y. But even the way and means by which Funk assisted the Party, can not in his conviction been condemned. The role thereby, however, which the prosecution attributes to him does not correspond with the facts. Funk's activity is in part, considerably overestimated in its importance, partly also is there an incorrect opinion about it.

The evidence of the prosecution consists mainly of references and extracts of reference books and especially of a book by Dr. P a u l O e s t r e i c h : "Walter Funk, a life dedicated to economics" which was presented in evidence to the Tribunal under 3505 PS US Exhibit No. 653. The core of this evidence is an "Economic Reconstruction Program" of the defendant Funk, printed on page 81 of this book which the prosecution calls "the official party declaration concerning the economic field" and "the economic bible for the party organization". This "Economic Reconstruction Program" forms the basis for the wrong accusation of Funk, on page 3 of the trial brief, that the defendant Funk assisted "in the formulating of the program which was publicly proclaimed by the Nazi Party and by Hitler". This "Economic Reconstruction Program" which during the testimony of the defendant Funk was read word for word (pages 8902 and 8903 of the official transcript)

did, indeed contain nothing extraordinary or even revolutionary nor really anything which was in any way characteristic for the national socialist ideology. The program points to the necessity of providing work, of creating productive credits without inflationary consequences, to the necessity of balancing the public finances, further to the need for protective measures for the agriculture as well as for the urban real estate and for a rearrangement of the economic relations with foreign countries. It is a program of which Funk in his testimony quite correctly said that a n y l i b e r a l o r d e m o c r a t i c p a r t y a n d g o v e r n m e n t c o u l d a d v o c a t e. The defendant Funk only regrets that the party did not fully subscribe to these principles. Due to his economic view point Funk later on had c o n s t a n t d i f f i c u l t i e s and differences with different party offices, especially with the German Labor Front, the Party Chancery, with Himmler and with most of the district leaders (Gauleiter). This was also confirmed by the witness Dr. L a n d f r i e d, who in his questionnaire, submitted as Funk Exhibit No.16, described these differences of Funk with the Party in detail. Funk had a reputation in the party predominantly as a l i b e r a l and as an o u t s i d e r. During that time, that is essentially in 1932, he established relations between Hitler and some leading personalities of the German economy. He also worked for an understanding of the national socialist ideas and for the support of the Party by the economy. By virtue of this activity he was described as H i t l e r's e c o n o m i c a d v i s o r. But this was not a party office not a party title.

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In Document EC-440 USA Exhibit 874 submitted by the American prosecution in the cross-examination of the defendant Funk, Funk states that the later Under Secretary K e p p l e r was c o n s i d e r e d the economic adviser of the Fuehrer for many years b e f o r e him (Funk). Funk wanted to show by this reference that the designation "Economic adviser of the Fuehrer" was given by the public to other persons also.

It was only for a very short period that Funk was commissioned with P a r t y t a s k s during that time. This activity never gained any considerable importance which follows from the fact that with the assumption of power the party activity of Funk ceased completely. In the other sectors, such as Food and Agriculture, Finances, etc, the P a r t y incumbents who entered the C i v i l S e r vice as a Minister, Under Secretary, etc. retained their Party offices which generally even gained in importance. The elimination of the defendant Funk from every party office at the moment of the assumption of power shows clearly that the Party leaders did not especially care for the party activity of Funk.

In the cross examination of the defendant Funk the Soviet Russian prosecution showed him an article which had appeared in the magazine "Das Reich" (18 August 1940) on the occasion of Funk's 50th birthday (USSR 450). In this birthday article the author, an economist by the name of Dr. Herle emphasizes that Funk "as intermediary between Party and Economy had become a p a c e m a k e r for a new spiritual attitude of the German entrepreneur".

In this respect it can be said: Funk never denied that he regarded it his task to find a synthesis for an economy which on the one hand has an obligation toward state and community, but on the other hand is based on private ownership and private initiative and responsibility. Funk always recognized the political aims and ideals of national socialism.

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The German people in its majority had embraced these goals and ideologies as was proven by several plebiscites. And Funk could not suspect that all these good intentions and ideal aims so often emphasized by Hitler, with which National Socialism began its reign, would later sink in the blood and smoke of war and in an inconceivable inadequacy and inhumanity. Funk testified on the stand expressly that he considered the authoritative form of government, the strong state, a responsible cabinet, the social community and a socially minded economy a prerequisite for a removal of the then grave intellectual and economic crisis of the German people. He always clearly emphasized the primacy of politics before the primacy of the economy.
To-day, after the terrible collapse of the national socialistic state these things are indeed, regarded differently. This goes for Funk, too.
As p r e s s c h i e f o f t h e R e i c h G o v e r m e n t , on 30 January 1933, he took up the state office of a Ministerialdirector in the Reich Chancery. The direction of the press policies however, passed already after 1½ months into the hands of Dr. G o e b b e l s when the latter became Reichsminister for Public Enlightment and Propaganda, and the press department of the Reich Government, which Funk should have had directed up to now was merged into the newly established Ministry for Propaganda. Only for the time being he retained the personal news report to the Reich President v. Hindenburg and to the Reich Chancellor Adolf Hitler, until the death of Hindenburg. Then this activity stopped altogether also. The office of the Press Chief of the Reich Government existed practically only on paper. This was expressly confirmed also by the defendant F r i t z s c h e upon his examination as a witness, on 28 June.

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III. Consolidation of control of overnment and party.

Persecution of the Jews of liberal professions.
(Reich Ministry of propaganda)

As to defendant's activity in the Reich Ministry of propaganda, the prosecution charges him as follows:

"By means of such an activity in the ministry of propaganda, the defendant Funk participated in establishing the power of the conspirators over Germany, and is particularly responsible for the persecution of "political dissenters" and Jews, for the psychological preparation of the people for war, and for the weakening of the strength of and will for resistance of the victims selected by the conspirators."

Also in this point of the accusation, the guilt of the defendant Funk has been derived almost exclusively from the fact, that he occupied the position of a secretary of state in the ministry of propaganda. The hearing of evidence, however, has shown that Funk had nothing to do with actual propaganda activity in his position as secretary of state. Funk did not deliver any speeches, either through the radio or in public meetings. The press policy was directed by Dr. Goebbels in person, ever since the ministry had been established. However, Funk took care, to a large extent, of the wishes and complaints of the journalists. He protected the press against trespassing by government offices and tried to secure for the press an individual look and an activity conscious of its responsibilities. This is expressed by the digest from the book written by Dr. Paul Oestreich: "Walther Funk, ein Leben fuer die Wirtschaft" (cf. 3505 PS USA Exh. 653 - doc. book Funk Nr. 4).

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Some of Funk's wordings from that period of his activity in the ministry of propaganda, as e.g. the sentence "the press is not a barrel-organ" and the further saying" the press should not be the scapegoat of the government " have become later on all but h o u s e h o l d w o r d s .

As secretary of state, Funk had, on the whole, only o r g a n i z a t i o n a l and e c o n o m i c a l t a s k s. He managed the f i n a n c i a l s i d e of the activity of the numerous organizations and institutes which were controlled by the ministry of propaganda, such as, particularly, the Reich broadcasting company, further the German Trade Publicity Council (Werberat der deutschen Wirtschaft), the state-owned film combines, the state-owned theatres and orchestras and the state-owned press agencies and newspapers. As to a r t , and according to his artistic tastes, he occupied himself with music and theatre. In the direction of the ministry of propaganda, a c o m p l e t e s e p a r a t i o n between p o l i t i c a l tasks on the one hand and o r g a n i z a t i o n a l and e c o n o m i c a l tasks on the other hand took place. This has been stated in unison by all witnesses examined on this point. Minister Dr. Goebbels in person directed the propaganda policy, exercising complete, absolute and exclusive control. His assistants herein were, not his secretary of state Funk, but his old collaborators from the propaganda/organization of the party, who, for the most part, were taken over by him in a personal union into the newly created ministry of propaganda. Funk, however, did not belong to the propaganda department of the p a r t y, neither before nor after the ministry was established. The assertion of Mr. Messersmith in his affidavit, submitted under 1760 PS, according to which Goebbels had incorporated Funk into the party organization, is erroneous, and can obviously be attributed to the fact, that Messersmith had, as an outsider, no insight into

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the division of work with in the ministry of propaganda, and moreover, apparently identified readily the propaganda activity of the party with the propaganda of the state ministry. This has been confirmed by the questionary submitted by Messersmith, as asked for by the defendant Funk, on May 7th, 1946. (Doc. Book Funk, Supplement No. 5). This questionary shows that Messersmith cannot even state whether he has had a conversation with the defendant Funk a few times or only once, furthermore, that he does not remember any more what topic was discussed at that time, nor in what capacity Funk was present at this meeting. With such vague and unreliable statements of a witness nothing, of course, can be proven.

As a proof of the fact, that Funk had nothing to do with the actual propaganda activity and - as the defendant Goering has asserted here as a witness - did not play any important part a all in comparison to Goebbels, I refer to the affidavit of the former Reichsleiter for the press, M a x A m a n n, of April 17th, 1946 (of Doc. Book Walther Funk exhibit No. 14). At first, the prosecution has submitted an affidavit sworn by this witness, of December 19th, 1945 (3501 PS); the statements contained therein have been, in the new affidavit of April 17th, 1946, supplemented and corrected in essential points. In this new statement, submitted to the prosecution and to the defence, the witness Amann gives evidence that also, according to his knowledge, Funk, as secretary of state in the ministry of propaganda, had nothing to do with the actual propaganda activity. For the rest, the witness confirms the statements of the defendant Funk, viz. that he (Amann) did not know in person the distribution of activities and the interior management of the ministry,

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and that his statements are exclusively based on informations by other persons. The witness H e i n z K a l l u s, on the other hand, worked for some years as an official of the ministry of propaganda. Kallus, too, confirms under oath in the answers, in the questionary addressed to him (Exhibit Funk No. 19), that on the whole Funk was, engaged in administration and financial questions. And the same was testified by the defendant H a n s F r i t z s c h e during his examination as a witness before this Tribunal on June 27th and 28th.

In the trial brief of the defendant Funk, p.9 - 3566 PS - the prosecution submitted the notes of a SS - Scharfuehrer S i g i s m u n d as evidence for the importance of the position which Funk is supposed to have held in the ministry of propaganda. An official of this ministry, by the name of W e i n b r e n n e r is supposed to have declared to that SS - Scharfuehrer that it was impossible to know whom Minister Goebbels would entrust with the office of radio superintendent, as Goebbels took most of the important decisions only in agreement with Under Secretary Funk. Now, Dr. Goebbels did not as a matter of course undertake the appointment to the leading post in broadcasting without getting in touch with Funk, the chairman of the administrative board of the Reich Broadcasting Corporation (Reichrundfunkgesellschaft); this, however, does not prove anything concerning the nature and the significance of the activity of the defendant Funk nor of the aims he pursued thereby. After all, the prosecution has been able to submit but o n e s i n g l e d o c u m e n t bearing the s i g n a t u r e of Funk as Under Secretary, viz. the f i x i n g o f a d a t e for the coming into force of a decree for the execution of a law concerning the Reichskulturkammer, of November 9th, 1933 (3503 PS);

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Hereof the prosecution deduces a responsibility or, at any fate, a co-responsibility of the defendant Funk for the entire legislation for the control and coordination of the cultural professions (Kulturberufe).

This conclusion appears to be wrong; quite apart from the fact that the point in question is the fixing of a date for a decree concerning execution, therefore a purely formal act, it must be emphasized that this law was decided by the Reich Cabinet of which the defendant Funk at that time was not a member.

Funk stated in his examination that, during the entire duration of his activity in the Ministry of Propaganda, he hardly gave his s i g n a t u r e more than three times representing Dr. Goebbels. For the rest, the defendant F r i t z s c h e testified here as a witness, on June 28th, 1946, that the position of Dr. Goebbel's long-time collaborator and personal adviser H a n k e, who later on became Under Secretary and Gauleiter, corresponded far more to the usual position of an Under Secretary in the ministry, than the one of the defendant Funk. It was Hanke, too, who maintained the liaison of Minister Goebbels with the section heads and advisers of the ministry, a task adhering otherwise to the Under Secretary in a ministry, but which was never entrusted to the defendant Funk, although he was an Under Secretary.

It is proven by the affidavit of the former editor-in-chief of the "Frankfurter Zeitung", Albert C e s e r (Funk Exhibit No.1), and of the attorney-at-law Dr. K a r l R o o s e n (Funk Exhibit No.2), as well as by the affidavits of the witness H e i n z K a l l u s (Document Book Suppl.No.18), that the defendant Funk, in his position as an Under Secretary of the Ministry of Propaganda, energetically undertook to help Jews and other persons who were oppressed and thwarted in their intellectual or artistic activities by the national socialist legislation and cultural policy, and that he did this under heavy risks to his own position.

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Among the persons for whom Funk interceded were not only Jewish editors, but also many prominent German artists, and the witness Kallus (cf. his questionnaire in the doc.book - Funk No.18) mentions in this connection the Jewish proprietors of a big Berlin directory publishing firm, whom Funk had given permission to carry on with their business, against considerable resistance of the competent section of the ministry and of the German trade publicity council (Werberat der deutschen Wirtschaft). The witness K a l l u s stated further, that, owing to this attitude towards the Jewish cultural workers, Funk was " s u s p e c t " to Dr. Goebbels and to the chief of the press section, B e r n d t , who was known to be particularly radical. Editor-in-chief O e s e r explicitly states, as a witness, in his affidavit (doc.book, Funk No. 1)that he has made his statements voluntarily to prove the " h u m a n a t t i t u d e " of the defendant Funk, and gives the names of eight Jewish editors of the "Frankfurter Zeitung", whom Funk had given permission to carry on with their profession. In this connection, O e s e r further remarks: " He (Funk) herewith proved his human understanding. Indeed, I have never heard from him (Funk), in the course of our conversations, any inhuman utterances. Owing to his (Funk's) concessions, the endangered people obtained, in part repeatedly, the possibility to hope and to work anew with us and to prepare, without loss of income, their change of profession and their emigration." O e s e r , a well-known economic journalist, who always kept completely aloof from the party, explicitly states that Funk without any doubt, exposed himself by his attitude towards the Jews.

In the cross-examination of the defendant Funk the prosecution referred to an affidavit, produced by the prosecution , of an editor called Franz W o l f ; this witness expressed - 3954 PS , 877 NS - the opinion that Funk may well have given those exceptional permissions not out of human sentiments,but rather in order to maintain the high standard of the "Frankfurter Zeitung". By the way,the author of the affidavit was actually one of the Jewish editors who were given permission to further exercise their profession by Funk.The assumption of the witness Wolf is in direct contradiction to the positive statements of th witness Oeser. The defendant Funk too opposed this interpretation and has pointed out that at that time such considerations were of no importance to him. In later years, when the "Frankfurter Zeitung" was to disappear, he had, so he said, used his influence in order to ensure the further publishing out of material considerations too, as this newspaper was, as an economic paper, highly esteemed abroad and was the best commerical newspaper of the country. However, this does not alter the fact that Funk had, atta time, used his influence repeatedly and with success in favour of Oeser and his collaborators, for purely humanitarian reasons.

The witness K a l l u s finally declared in his questionnaire (page 3 of doc.book Funk, suppl. 4, nr. 18) that he remembers several occasions, where Funk m a d e p o s s i b l e t h e e m i g r a t i o n o f J e w i s h p e o p l e a t t o l e r a b l e c o n d i t i o n s .Kallus confirms hereby the statements of the witness Luise F u n k (doc.book Funk exh. nr.3),according to which the defendant Funk has often received, in the years when he was Under-secretary of state in the ministry of propaganda, letters of thanks from Jews who had emigrated at that time from Germany and who thanked Funk for having given them facilities for liquidating their businesses and for having procured them permission to take along abroad considerable parts of their furtune.

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Evidence concerning this 2nd part of the indictment has accordingly shown that Funk is guilty in the sense of this part of the indictment neither in his official capacity nor by his actions. He has helped, as far as it was within his power, many Jews and many individuals who were endangered and hindered in their cultural work, out of their material and spiritual distress, although by doing so he jeopardized his own position.

IV. Preparation of wars of aggression.
(point IV of the indictment)

Point IV of the indictment reproaches the defendant Funk with "having actively participated, while fully cognizant of the aggression plans of the conspirators, in the mobilization of German economy for the war of aggression".
As proof of this assertion, the indictment points out at first that the Ministry of economy (Wirtschaftsministerium) was "made part of the four year's plan by Goering" as High command of the German war economy and then put under Funk's command. Further on, the indictment states that, by the law of defence of the Reich of September 4th 1938 Funk was, on his capacity of high "commissioner of economy", explicitly entrusted with the mobilization of German economy in time of war. The statement of the indictment that the Reich Ministry of economy was made a part of the four year's plan before its transfer by Goering to Funk, is quite correct. But the high command of the German economy was not exercised by the Reich Minister of Economy, Funk, but by the commissioner for the four year's plan exclusively, viz. the co-defendant Goering, whose instructions Funk had to follow.

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Besides, the most important branches of production, as coal, iron, machines, motors, chemicals, and others, were managed by special general commissioners of the Four-Year's Plan, who were controlled directly by Goering and received their instructions from Goering, but not from Funk. The Reich ministry of economy was but the office which executed the directives of the Four-Year's Plan. The defendant Funk, as a witness, has pointed out that some offices, as the Reich Office for Economic development (Reichsamt fuer wirtschaftlichen Ausbau) under professor Krauch and the Reich Office for Soil Investigation (Reichsamt fuer Bodenforschung) under secretary of state Keppler, were only formally under the supervision of the Reich minister of economy, but did, in fact, function as autonomous institutions of the Four Year's Plan.

Funk's position as Plenipotentiary for Economy was vigorously attacked from the beginning. During the cross-examination of the defendant Funk by the American prosecution a document EC 255 was submitted, a letter of the Reich War Minister von Blomberg to the commissioner for the Four Year's Plan Goering, dated November 29th 1937, wherein Blomberg proposes that the defendant Funk, who had just - on November 27th 1937 - been a pointed Reich minister of economy should also be appointed general commissioner for war economy. However, this was not done.

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At first, Goering himself took over the Reich Ministry of economy, and handed it over only in February 1938, after 3 months, to the defendant Funk. Then the high command of the armed forces, more especially the Wehrwirtschaftsstab (general Thomass), requested that the Plenipotentiary for War Economy should be bound, for the future, to follow the directives of the high command for all questions connected with the supplying of the armed forces (document EC 270 USA exhibit 840). In this letter the high command of the armed forces, Wehrwirtschaftsstab, claims a r i g h t t o d i r e c t the general commissioner for war economy on nearly everyone of his fields of activity. The defendant Funk tried, by a conversation with Reich Marshal G o e r i n g and a letter to Reich Minister Dr. L a m m e r s to c l a r i f y his position as general commissioner for war economy, and asked to be placed, as Plenipotentiary for War Economy, under direct command of Hitler, and not to be compelled to obey the directives of the command of the armed forces. Goering and Lammers agr ed with Funk's opinion. B u t t h i s h a s n o t h i n g t o d o w i t h F u n k ' s b e i n g p u t u n d e r c o m m a n d o f G o e r i n g , a s a l l o t h e r s u p r e m e R e i c h o f f i c e s a n d m i n i s t e r s w h i c h w e r e p u t u n d e r H i t l e r ' s d i r e c t c o m m a n d , w e r e r e q u i r e d t o f o l l o w t h e d i r e c t i v e s o f t h e c o m m i s s i o n e r f o r t h e F o u r Y e a r ' s P l a n . It is, however, remarkable that, according to the act for the Reich defence of September 4th 1938, the defendant Funk did not become Plenipotentiary General for W a r Economy, but Plenipotentiary for E c o n o m y (w i t h o u t w a r) , and that this act explicitly stated that Funk had to o b e y the requests of the supreme command of the armed forces. Accordingly, the supreme command of the armed forces has at last carried through its will.

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But also the individual Economic departments which according to the Reich Defense Law were under the direction of the Plenipotentiary General for the Economy for his special tasks, were not willing to recognize him. During the cross-examination of the defendant Funk an interrogation of the former Under Secretary Dr. Hans Posse, Funk's deputy as Plenipotentiary General for economics (3894 PS, USA piece of conviction 843)was produced, in which the latter declared: that the Plenipotntiary General for the Economy "in reality never entered into function!" The ministers and Under secretaries of the individual economic departments (Finance, Agriculture, Transportation etc.) did not , according to the statement of Posse , wish to be placed under Funk's control and protested against it. Posse then speaks of the difference concerning the Four Year Plan. He calls these conflicts "the struggle for power", whereby in this connection nothing else is meant but the authority to make decisions with regard to the other economic departments. This was not a difference between Goering and Funk, this is wrong, because it was evident that Funk even as a Plenipotentiary General for the Economy was reporting to Goering. Actually this was a quarrel of the undersecretaries: The individual economic departments declared they reported to the Plenipotentiary for the Four Year Plan and refused to recognize the right of the Plenipotentiary General for the Economy to give them directives, because he himself was under the direction of the Four Year Plan. The under secretaries of the Four Year Plan supported the departments in this interpretation. This lack of clearness and the overlapping of competencies were the reasons why the authority to issue directives passed already a few months after the outbreak off the war from the Plenipotentiary General forthe Economy

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also formally into the hands of the Plenipotentiary for the Four-Year-Plan. In answer to the prosecutor's question addressed to Posse whether he did not customarily discuss important matters with Funk, Posse answered: "Yes, but nothing ever came of it"! Posse confirmed that Goering's authority was far stronger, and that eventually he completely dissolved the office o the Plenipotentiary General for the Economy. This happened, according to the statement of the defendant Funk, in December 1939 i.e. a few months after the outbreak of the war. Only a purely formal right to publish decrees remained. These facts were confirmed before the Tribunal also by the witness Dr. Lammers. Therefore it was quite correct, when the defendant Goering stated here that the position of Plenipotentiary General for the Economy, as held by Funk, existed only on paper.

Naturally the office of the Plenipotentiary General for the Economy worked in continuous business relations with the other economic departments, with the Four-Year-Plan, with the staff of the department for defense economics of the German Supreme Command and with the Plenipotentiary General for administration i.e. the Reich Minister of the Interior. As a proof the prosecution presented various documents showing that in the meetings the Deputy Plenipotentiary General for the Economy and his leader staff, questions of financing a war of war production, labor and others were discussed. In this connection the office of the Plenipotentiary General once also treated the question of employing prisoners of war in the industry, but this was an entirely theoretical discussion. (Document EC 488 USA Exhibit 842).

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Why this General Staff- economy-work, which had to be done in times of peace in case war arose, should be incriminating for defendant Funk, is not clear. Besides, until August 1939 he personally did not interest himself in any way in detail in any of these questions. But all this work of the Plenipotentiary-general for economy consisted of general preparations in case of war and did not apply to any special war. However, when Funk's propositions for changing over from peace-time to war-time economy was worked out in cooperation with the other economical departments in August 1939, the danger of war with Poland was already pressing.

But nowhere in the material presented by the prosecution is to be found a single indication for the fact, that defendant Funk knew anything about political and military conversations in which a planned war, in particular a war of aggression of Germany was discussed. Funk was never invited to any conversations of this kind. He was, in particular, not present at the conversation at Goering's on 14th October 1938, which was treated exhaustively by the prosecution on page 24 of the Trial-brief. (1301 PS.) According to the prosecution, Goering referred at this meeting to an order of Hitler to increase armament unusually, especially with regard to arms of attack. The prosecutor declared (page 2447 of the German transcript) at the session of 11 January 1946 that Goering at that meeting had addressed words to Funk, "which were the words of a man already at war". However, by several documents (Doc. book No. 5, 6, 7 and 8)

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it is unequivocally proved, that a.
present at that meeting, as he was in
time in order to conduct economical negotia.
Bulgaria. This exhibit of the prosecution, whic.
was meant to be a main exhibit, is thereby invalidat.
When Funk wrote his letter, dated 25th August 1939, to
Hitler, the German and Polish Armies were already facing
one another completely mobilized. Therefore he was com-
pelled to act that way and could, at that moment, no longer
retract any preparations. Compare thereto Questionnaire
K a l l U.S. item 5 (Doc. Book Funk No.18).
Defendant Funk declared here on the witness stand: "It was
naturally my duty (as a Plenipotentiary General for the
Economy) to do all I could to prevent in case of war, shocks
in the civilian sector of economy and it was further my
duty as a president of the Reich Bank to reinforce, as
much as possible the supply of gold and foreign currency
in the Reich Bank. That was necessary on account of the
general political tension at the time and it would also
have been necessary if war had been avoided and only
economic sanctions had been brought to bear which, in view
of the tension of the political situation at the time were
to be expected. And it was just as well my duty as Reich
Minister for the Economy, to do all I could, to increase
the production. (Page 8931 of the official protocol.)
To this subject witness P u h l states in his answers in
the questionnaire of 1 May (Funk Exhibit No. 17), that the
position of the Reich-Bank in the last seven months of
Funk's presidency before the outbreak of the war had not
been essentially reinforced and that the exchange of
foreign assets for gold, since January 1939, had only been
executed in a modest way. The providential gold and foreig
currency policy of the Reich-Bank corresponded to customary
practice.

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These statements of P u h l are important for the correct appreciation of Funk's references to the changing of foreign assets into gold, in his letter to Hitler from 25th August 1939. (699 PS, GB Exhibit 49) : The transactions were, in any case, at the time when Funk was president of the Reich-Bank, hardly longer of any importance. Funk's excessive way of expressing himself in this letter to Hitler makes the contents appear more important than they actually were. Funk explained these facts at his interrogation by the fact that this letter was a letter of thanks and that in those days every German was under highest tension on account of the political occurrences that were getting all Europe very much excited and that at this moment of danger of war for his country, he wanted to let his chancellor know that he (Funk) too had done his duty. T h i s w a s t h e f i r s t a n d i t r e m a i n e d t h e o n l y t i m e t h a t F u n k a s P l e n i p o t e n t i a r y f o r E c o n o m y g o t a c t i v e a n d b u s y a n d , s o m e w h a t s a d , t h e d e f e n d a n t c o n t i n u e s : " E v e r y m a n w a n t s t o b e s o m e b o d y o n c e i n h i s l i f e ."

The defendant Funk has explicitly stated at his interrogation before the Tribunal that he, right to the end, did not believe war would come and why he did not believe it, on the contrary that he counted on the Polish conflict being settled by diplomatic means. The correctness of this statement is also confirmed by the witnesses Landfried, Posse and Puhl in answering of the questionaries, presented to the court as exhibit by the Defence or by the Prosecution (Funk Exhibit No. 16 and 17 and PS 3894). T h e d a n g e r o f w a r w i t h <u>R u s s i a</u> came to Funk's knowledge for the first time when he heard of R o s e n b e r g having been appointed Delegate for the unified treatment of East-european problems in April 1941.

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At that time the defendant Funk was given the same explanations by Lammers and Rosenberg as were expressed in general before the tribunal here by witnesses heard on this question. He was told the reason for the preparations for war against Soviet-Russia was that the Soviet-Russians were massing strong troops along the entire border, that they had invaded Bess-Arabia and that Molotov in his discussions regarding the territory of the Baltic Sea and the Balkan had made demands which Germany could not fulfill. Since Rosenberg stated, that the commission given by Hitler included also economic measures, Funk placed Ministerialdirector Dr. Schlotterer as liaison-man at Rosenberg's disposal. Later Schlotterer took over the direction of the economic section of the ministry Rosenberg and he also joined the Economic-Operations-Staff East (Wirtschaftsfuehrungsstab) of the Four-Year-Plan. The Ministry for Economy itself had practically nothing to do with the economic questions of the occupied East and concerned itself merely with questions which had bearings on internal German economy. The Ministry for Economy had no authority whatever for decisions in the occupied Eastern territories.

During the cross-examination the defendant Funk, on the subject "Preparations of war against Russia", was shown an extract from an interrogation of 19 October 1945 (3952 PS USA Exhibit 875). In this interrogation Funk stated, that the defendant Hess had asked him at the end of April 1941 if he had heard anything about an impending war against Russia? Funk replied: "I have not heard anything definite, but it seems as if there is some talk along that line." The explanation for this conversation at the end of April 1941 between two who were not initiated is most likely, that on this date Funk did not yet exactly know the reason for

Rosenberg's commission, and was going only on presumptions and by rumors.

On 28 May 1941 R o s e n b e r g had a m e e t i n g w i t h Funk (doc. 1031 PS). In this meeting the question was discussed how the m o n e y - p r o b l e m i n t h e E a s t was to be regulated, if a war against Russia should break out and if those territories should be occupied by our forces. It certainly is a most natural procedure that in view of an imminent war the authorities responsible for money-matters should discuss the question of how, in the case of occupation of enemy-territory, money-matters should be handled there! Funk was against any regulation which might cause speculations and called the suggested rate of exchange for Mark and ruble an arbitrary act. He joined Rosenberg in his conception that the Russian territory should have its own national currency as soon as conditions would permit it. For the rest he demanded further investigation of these problems, especially since the matter could not be determined in advance. So heretoo Funk approached matters with his characteristic precaution and endeavoured to find a solution which would bring about stable conditions. If it was mentioned in this discussion (but not by Funk), that ruble bills had to be printed in order to meet the most urgent demands for currency, then Funk saw neither anything unusual nor criminal therein. If a country has been depleted of its currency, then a new currency simply must be created by that power which is responsible for the maintenance of a stable monetary system. W h o produced the banknotes was entirely unimportant. Important for him was by whom the banknotes w e r e i s s u e d and in w h a t q u a n t i t y. Moreover the production of a new banknote requires much of preparation, so that the execution of such a plan could have been intended only for a much later date. A c t u a l l y

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war broke out already a few weeks after this discussion. The defendant Funk knew that war with Russia was imminent. That Germany had been preparing for such a war for a long time was as little known to him as the fact that Germany would attack, and thus wage a preventive war.

Funk was informed neither on the march into Austria nor about the negotiations on Sudetenland (in September and October 1939 he was not in Germany at all) nor on the seizure of the remainder of Czechoslovakia. About Poland he knew that the conflict was acute. Likewise about Russia. But in both cases only a short time before the actual outbreak of war. Regarding wars with other countries Funk received no information whatsoever before the opening of hostilities. From all the above mentioned facts it can be clearly seen that Funk knew nothing of Hitler's intentions in the line of foreign policy, and had no knowledge whatsoever of the fact that Hitler was making any kind of plans for <u>aggressive war.</u> Truly Funk concerned himself in the summer of 1939 especially with the conversion of German economy from a peace - to a war-time-basis. But to prepare the German people for a defensive war and to take economic measures necessary for a defensive war, Funk considered not only as his right but as his duty as official of the Reich.

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Now the prosecution believes that it can get around all these deliberations by calling the Reichsregierung or the National-Socialist Party or preferably all of the German people a c r i m i n a l o r g a n i s a t i o n who c o n s p i r e d against other nations and whose sole task had been, to plan and wage wars of aggression, to subjugate and enslave foreign nations, to plunder and to germanize other countries. This deduction is erroneous because only Hitler himself and a few of those men closest to him, of the type of a Goebbels, Himmler and Bormann devised and executed these criminal plans. According to the evidence heard it cannot be doubted that even the highest officials of the state and of the Armed Forces were not initiated into these plans, but rather that these plans were concealed from them by a cunning system of secrecy. A comparison with s e c r e t s o c i e t i e s, which in other countries banded together in criminal organisations, as for example the Kuklux-Klan in America, can not be made, also for an other reason. The Kuklux-Klan for instance was from the start organized as secret society with the purpose of terrorizing and committing crimes. In 1871, after scarcely 6 years of existence, it was, by a special law, the Kuklux-Klan-Act, expressl forbidden by the North-American Government. At that time the government even declared martial law against it and fought it with every possible means. It was an organization with which the government and the parliament of the United States never had any dealings at all. A man like Funk would, of course, never have joined such a secret society, a criminal organization against which the government was fighting. However the National-Socialist-Party in Germany never was a secret organization,

but was a party

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recognized by the government and considered lawful; in a special Reich law expression was given to the unity between this party and the state. The leader of this party was at the same time from 1934 the elected head of the Reich and this head of the state and his government have from 1933 on constantly been officially recognized as a government by the entire world. It was just because of this international recognition of Hitler by all the foreign countries, a recognition which was still maintained even during the second world-war, that Funk and millions of other Germans never doubted the lawfulness of the government and that such doubts, if they ever tried to enter his mind, were nipped in the bud, and millions of German officials and German soldiers assumed exactly like Funk that they were only doing their duty in not denying this head of the state the recognition which all the countries of the world gave him.

The foreign countries, their statesmen as well as their General Staffs, the Press as well as the Intelligence service of the other countries surely were better informed about the German situation and also about the true aims of German politics than the German citizen who had no access to foreign newspapers, who was not permitted to listen to foreign radio stations if he did not want to land in the penitentiary or on the scaffold, who for years lived as isolated as in a penitentiary and could not even trust his neighbors and friends yes, not even his relatives nor dare to talk things over with them. Even ministers knew no more about Hitler's true plans than any other fellow citizen and even of the most important state affairs the mostly learned only a f t e r w a r d s through the newspapers or the radio. Who could have ever conceived the thought that foreign states would maintain diplomati relations with a criminal organization and that official persons of foreign countries should recognize and call upon a man in whom they see the head of a band of conspirators.

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Funk has never denied, as has already been mentioned, that in his plans and regulations he naturally also thought of the possibility of wars which Germany perhaps some day might have to wage, exactly as every general staff as a matter of duty has to give consideration to such possibilities. At that time, there esisted for Funk every reason thereto; for the world situation since the first world-war was so tense and the conflicting interests of the individual nations appeared often insurmountable to such an extent that e v e r y statesman had to make the necessary preparations for war if he did not want to be accused of negligence or of betrayal of the interests of his own people. Therefore such preparatory activity in itself had no criminal significance, and Funk does not doubt at all that th ministers of economics and the bank-presidents of other countrie also during those years made preparations similar to his for the event of war, and had to make them. For the question, of legal punishment in Funk's case it is not essential whether or not he, for his part, ordered such preparations, but exclusively whether or not he knew that Hitler was planning a g g r e s s i v e w a r s and that he intended to wage such aggressive wars i n v i o l a t i o n o f e x i s t i n g t r e a ties and under d i s r e g a r d o f i n t e r n a t i o n a l l a w. B u t F u n k, a s h e d e c l a r e d u n d e r o a t h, d i d n o t k n o w t h i s a n d d i d n o t g o o n s u c h a s s u m p t i o n s e i t h e r. Due to Hitler's constant affirmations of peace such possibilities never entered his mind. Today of course we know, on the basis of the actual events of the time that followed and on the basis of the facts established by this proceedings

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that those peace-assertions of Hitler's, which were on his lips yet when he committed suicide, were in reality only lies and deception. But, at that time, Funk took these peace-affirmations of Hitler's to be the absolute truth. It never entered Funk's mind at that time that he and the whole German nation could be deceived by Hitler; but rather did Funk trust Hitler's words exactly as did the whole world, and thus became a victim of that deception as did the whole world. If foreign statesmen and generals are not reproached for having believed Hitler's peace-affirmations, although they surely must have been much better informed about Germany's re-armament than Funk, then one cannot now because of the faith he had in the head of the state, accuse him of a crime.

V. Occupied Territories - Forced Labor.

The evidence which the prosecution brought against Funk on the subject of "Forced Labor" or "Slave-Labor-Program" (as the prosecution calls it) is only scanty. In the main he is held responsible for the forcible employment of foreign man-power on the grounds that, since autumn 1943, he was a member of the "C e n t r a l P l a n n i n g." He attended a session of Central Planning Board for the first time on 22 November 1943 and later only very rarely, as was stated by the defendant Speer as witness and as is shown by the minutes of this board. W i t h q u e s t i o n s o f d i r e c t i o n o f l a b o r F u n k n e v e r c o n c e r n e d h i m s e l f a t a l l. He was in principle o p p o s e d to drawing toomany laborers, especially by force, out of the occupied territories because this disturbed the economic life and the social order of these territories. Sauckel, Landfried and Hayler have affirmed this, and the same is disclosed by Funk's personal remarks in the here frequently mentioned conference with Lammers on 11 July 1944 (Document 3819 PS), where, for example, Funk expressed himself against "ruthless police raids."

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When Funk sent representatives to Central Planning, he did it only for the purpose that they should see to it that the necessary raw-materials were assigned to the industries of the consumer's goods and for export, but never on account of the questions of foreign labor. If the prosecution confronted the witness Hayler during a cross-examination on 7 May 1946 (Page 9070 of the German transcript) with a statement by Funk from the preliminary interrogation of 22 October 1945 (3544 PS), wherein Funk declared that he had "not racked his brain" over these labor-problems, then it must also be stated that in the next sentence of this protocol, so to speak under the same breath, Funk declared that he had always done his utmost to prevent the hauling away of laborers from their homeland, e.g. France. This second sentence, although it was not quoted, is important because it also reveals Funk's declining attitude against the forcible measures used in connection with direction of labor. Now it has been deposed by the defendant Speer in the session of the tribunal on 20 June that Central Planning made no plans at all for direction of labor. Only occasionally discussions on direction of labor questions took place here. Not the stenographic notes introduced here, but rather the protocols, contain the actual results of the negotiations and the decisions of the Central Planning. But these protocols have not been introduced by the prosecution. As has been proven, Funk, who attended the sessions of Central Planning only a few times

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never received the stenographic notes, but only the protocols for his information. Previous to the time when Speer made the decisions, regarding war-production, and before Sauckel became Plenipotentiary General for Direction of Labor, i.e. before 1942, were questions of procurement of manpower for production discussed in the Four-Years-Plan. Later too, demands for the labor required were, in the main, as Speer has testified, presented in direct negotiations between the industries and the offices for direction of labor . While the production of the Reich-Ministry for Economy, according to the instructions of the Four-Years-Plan, still was under the care of Funk, these direction of labor questions were not dealt with by the Reich-Ministry for Economy but rather by the Plenipotentiaries-General of the Four-Year-Plan, appointed for the various branches of industry negotiated directly with the Plenipotentiary-General for Direction of Labor or with his competent offices. Speer rectified this in regard to the document Sauckel Exhibit No. 12 and likewise the fact, that several branches of industry such as the construction department, which do not belong there, were in this document cited as coming under the competency of the Reich-Minister of Economy. Some other items had been rectified previously already by Sauckel's defense council. The various economic offices (Wirtschaftsaemter) likewise did not request manpower from the Reich-Ministry of Economy. They were, however, not offices of the Reich Minister of Economy, but were incorporated in the so-called intermediate instance, i.e. in the provincial authorities or also in the district leadership. (Gauleitungen).

Important in this point is the establishment of the fact, that up to 1943, that is up to the time, in which Funk was at all competent in questions of production, foreign workers came to Germany through recruitment solely upon the basis of a voluntary decision. With respect to this, I refer to the decree of Reich Minister for labor promulgated on 30 July 1940, presented in Funk's book of documents under No. 12, in which the conformity with obligations internationally agreed upon is specifically pointed out.

Finally it must be concluded that Funk, at the time he joined the Central Planning, no longer had any tasks to fulfill in the production and consequently could no longer demand workers for such.

Regarding Funk's attitude towards the economy of occupied territory and measures, taken by him to assure the maintaining of orderly economic conditions and especially the maintaining of stable conditions of currency, I refer to questionnaires Landfried (Funk, exhibit No. 16) and Puhl (Funk exhibit No. 17) as well as to testimony of the witnesses Hayler, Neubacher and Seys-Inquart. I want to mention solely the document 2263 PS, introduced by the prosecution during cross-examination of defendant Funk, a letter from the Under Secretary of the Ministry of Economy to the Wehrmacht High Command of 6 June 1942, in which the release of 100 million Reichsmark from occupation moneys is requested for purchases of the Roges - Raw Material Inc.(Rohstoffhandelsgesellschaft) on the black market in France.

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Here we deal with the purchases in occupied territories mentioned before resulting from instructions by the Four-Year-Plan. These, however, represent exactly those purchases against which Funk protested. His protests finally culminated in the decision of the Plenipotentiary for the Four-Year-Plan (Goering) to prohibit any such further purchases. As is known, Funk personally had no authority to issue instructions for the occupied territories. Moreover such controlled purchases by authorities are to be evaluated in a different light from the uncontrolled purchases of the various State, Party and Wehrmacht conponents, against which Funk fought time and again. (Questionnaire Landfried, Documentbook Funk No 16.) Summarily it must be said, that the evidence submitted, has proved beyond doubt, that the defendant Funk always opposed the exploitation of occupied territories by various measures and that by the very fact that he succeeded in preventing the devaluation of currency in occupied countries they were protected from harm, the extent of which cannot be evaluated individually.

V. Elimination of Jews from economic life. (point 3 of the Trial Brief)

In view of the time at my disposal I cannot afford to go into further details with respect to accusations raised against Funk by the Indictment but I shall refer to statements given by Funk with respect hereto; I must first, however, deal more fully with a problem, which to me seems the most important in the whole of the accusation against Funk, namely the reproach, that he participated in any manner in the p e r s e c u t i o n o f t h e J e w s . This question appears to me to be the most d e c i s i v e for judging of defendant Funk before this tribunal.
Of course it was never asserted in Germany that Funk belonged to those fanatic Antisemites, who participated in or approved of the pogroms against the Jews or who derived benefit from these actions; Funk always declined that sort of thing. The explanation for this fact is to be found not only in his natural disposition and the surroundings in which he grew up but also in his decades of journalistic activity mostly in that part of the press, which dealt with economic policies and, consequently, kept him in continuous touch with the valueable circle of Jews in economic life. Experts know and speak highly about it even today, that Funk, at that time already, showed an attitude that was free of all antisemitism and appeared to be far more f r i e n d l y towards the Jews than hostile.

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It is somehow tragic, that in spite of this Funks name in this trial has been repeatedly connect with the d e c r e e of November 1938, by which the elimination of Jews from economic life was carried out. Whether he liked it or not, all questions which concerned the treatment of Jews in the economic life of Germany were under the jurisdiction of his depart- ments as Minister for Economy. As official it was his d u t y to issue the necessary decrees for execution.

This must surely have been very difficult especially for Funk in view of his tolerant attitude. He had, at that time, been a state official of the Reich Propaganda Ministry and the Ministry for Economy for 8 years already, and yet the prosecution could not ascertain a single case during that time, in which Funk had shown an antisemitic attitude, where he had incited people towards the Jews, it could not cite a single instance when he would have approved of or preached violence, terror or injustice. On the contrary; we know from statements of various witnesses, that Funk i n t e r c e d e d on behalf of Jewish fellow - citizens in those years time and again that he was concerned about them and in their interests sought to alleviate hardships, to prevent encroachments on their rights and to rescue the existence of human beings, even if they were Jews or political opponents.

It is therefore not to surprising, that this man of rich experience in the economic field,

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this man of far-reaching knowledge with his outspoken tolerant views was most painfully affected when on 10 November 1938 he had to witness the destruction of Jewish homes and shops in Berlin. One incoming report upon another confirmed the fact, that Goebbels and his clique exploited the excitement of the populace over the assasination by a Jew of a German diplomat in Paris, organized such programs throughout Germany and that the outrages led not only to the destruction of Jewish property but also to the murder of many Jews and to the persecution of many thousands of innocent fellow-citizens.-

The affidavit of his Ministerialrat Kallus (Document book Funk No.15) of 9 December 1945 and Frau Luise Funks statement made in place of oath of 5 November 1945 (Document book Funk No.3) prove clearly, that Funk condemned such excesses to the utmost and, that he called them swinish in the face of minister Dr. Goebbels, in great excitement, and in the event of a repetition of such he threatened to resign his office. He had, at that time already, told the almighty Goebbels into his face that one had to be ashamed of being a German.

All this expressed the just indignation of a man, who for decades had exerted himself for moderation towards the Jews and political opponents and had thus earned many a letter of appreciation, a man who had fought for years to prevent any terror, to raise the standard of German economic life and who now, in a single night, saw all his efforts frustrated by the brutal fanaticism of a Dr. Goebbels.

Funk himself during his interrogation clearly described how from entering upon his office as a Minister of the Economy from February 1938, he was being pressed continuously by Dr. G o e b b e l s and Dr. L e y to eliminate the jews also from the economic life; the witness Dr. Hayler stated here that also H i m m l e r reproached Funk of this; Funk himself as a witness stated how in those years repeated difficulties arose with the workers stirred up by propaganda who sometimes no longer wanted to work with jewish managers or did not dare to do so, and how, under the pressure of these conditions, it occurred that numerous jewish business owners sold their business, and quite often at ruinous prices, to people who to the Minister of the Economy Funk appeared to be entirely unfit for acquiring and managing of such businesses. Time and again Funk tried to oppose this irresistible condition; he strove continually to slow down, at least, this process of aryanization, to provide for a suitable and just settlemen/ for the jewish business owners and to make possible their emigration from Germany together with allowing them to take along their belongings. But day after day Funk came to recognize more and more that he was too weak to stop this movement and that the radical elements around Dr. Goebbels and Dr.Ley increasingly won the upper hand and in so doing unfortunately even were able to lean on Hitler's authority. The latter was in the course of time won more and more for the radical treatment of the jewish question by a few irresponsible advisers who today do not sit in the prisoners dock.

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Into this fight between Funk and other considerate people on one side and Goebbels and Ley on the other side, the events of 9 November 38 burst which, as Dr. Goebbels himself later admitted toward Fritsche, were aimed d i r e c t l y a g a i n s t t h e p e r s o n o f t h e d e f e n d a n t F u n k who thereby was to be confronted with accomplished facts. And through this action of November 1938 Dr. Goebbels actually reached his goal as the witness Dr. Landfried testified. Goebbels was in the future able to refer to Hitler's own order that the jews be completely excluded from the German economic life, although Funk, as the minister concerned, repeadetly pointed to the relations with foreign countries from which the German Reich and its economy were dependent.

G o e r i n g , in his capacity as a plenipotentiary of the Four Year Plan, gave the orders necessary for carrying out this program, namely upon H i t l e r ' s d i r e c t o r d e r s. Funk never had any doubt that thereat Goering also was to a certain degree only a figure-head because he always knew Goering as the man who just in the jewish question had previously rejected extreme radicalism. This conception of Funk was shared by wide circles of the German people and it proved to be correct

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in the fateful G o e r i n g - m e e t i n g o n 12 N o v e m b e r 1 9 3 8 - 1 8 1 6 PS -.

At a preceding meeting, Goering sharply condemned the terror acts which had occurred and declared to the Gauleiters present that he would make responsible every Gauleiter personally for the acts of violence committed in his district. But what was the good of that? Goebbels, in the course of the second meeting, the minutes of which have been submitted to the tribunal, - 1816 PS - , succeeded after all with his radical demands, and Funk, as from the result of this meeting, finally had to come to the conclusion that the c o m p l e t e elimination of the Jews from German economic life could simply not be delayed any longer because the authoritative circles had become far too fanatic. It became evident to Funk that l e g a l decisions would now have to be taken if the Jews were to be protected from further acts of terror, plunder and violence and if they were to get at least some proper compensation. Funk, during this Goering-meeting of 12 November 1938 strove along that line time and again. Due to the efforts made by the defendant Funk supported by Goering, the Jewish businesses first were reopened, the whole procedure was taken out of the arbitrary hands of local agencies and put on a legal basis all through Germany, and finally, this liquidation was spread over a certain period of time in order to gain time for carrying out this action. If the minutes of the Goering meeting

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of 12 November 1938 are read then one will over and over again be able to find, in spite of its incorrect and incomplete formulation, distinct clues which prove Funk's moderating influence, namely his urging, mentioned in the minutes repeatedly, to reopen the jewish stores, and his proposal to let the jews retain at least their securities and his rejection of Heydrich's demand to place the jews in ghettos. It is a fact proven by the minutes of 12 November 1938, that Funk opposed Heydrich's proposal and said, quotes: "One did not need ghettos, the jews could move closer together among themselves, the life of 3 million jewish people amongst not less than 70 million Germans could surely be regulated without ghettos." Funk thereby wanted to prevent the jews from being interned in ghettos. Of course, at that time Funk did not succeed completely in his point of view. And so, for example, his proposal to let the jews keep their securities was refused although Funk called attention to the fact that a realization of the jewish securities would suddenly flood the German stock market with securities valued at half a billion and therefore would inflict serious consequences upo the German stock market. Decisive for the judgment of the defendant Funk is his obvious e f f o r t to save for the jews what could be saved under the given circumstances, and thereby we must not lose sight that in all those measures Funk acted only in his capacity as M i n i s t e r o f t h e E c o n o m y,

that is, as o f f i c i a l , who merely gave the o r d e r t o e x e c u t e the command which Goering, as plenipotentiary of the Four-Year-Plan, had issued on Hitler's orders. Funk thereby found himself on the very same position of constraint as, for example, the Reich Finance Minister Graf Schwerin-Krosigk, who, at the same time, had to issue the orders regarding the punitive levy of 1 billion Reichsmark to be payed by the Jews or as the Reich Minister of Justice and the Reich Minister of the Interior, both of whom had issued analogous orders for execution in their respective sphere of business.

It is now for the tribunal to give a fundamental ruling on the difficult l e g a l q u e s t i o n . whether an official of a State, the government of which has been legally recognized by all governments of the world, is liable to legal punishment for putting into effect a l a w which has been passed in accordance with the legal order of this State. This legal problem is entirely different from the other question whether or not the fact that an official order when given by a s u p e r i o r can serve as an excuse.

Our sense of justice fully admits that a citizen, an official or even a soldier cannot defend himself by pointing to the o f f i c i a l o r d e r , given to him by his superior if this order obviously implies an illegal act and, especially, a crime [illegible]

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and if the subordinate under the existing circumstances and in due consideration of all the accompanying facts realizes or should realize that the official order is contrary to the law. If this latter prerequisite exists one may in general fully approve that the right is not accorded to the subordinate to refer to an official order of his superior as an excuse and to maintain that he was only carrying it out. In that respect this stipulation of the Charter does not practically contain anything new, but only the confirmation and further development of legal principles which to a varying extent are recognized in the penal law of most of the civilized nations to to-day. A certain precaution, however, seems to be indicated in this matter, as on the other hand it should not be forgotten that obedience to the orders of one's superiors is and must in future remain the foundation of every government in all nations if an orderly functioning of the state administrative apparatus is to be safeguarded, and that it is very dangerous if the civil servant himself is to decide for himself whether he should keep his oath of allegiance.

But in our case something different is involved: Here we are concerned with the obedience of the citizen and specially of the civil servant to the l a w of the state which was lawfully promulgated in accordance with the constitutional rules of this state. If we want to obtain a just and correct answer to t h i s question, it will be pertinent

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to disregard entirely the German conditions and to pose the question what the decision would be if the civil servant of a n o t h e r, not German country, carries out a law. Let us assume for instance, some foreign country embracing a minority promulgated in accordance with its constitution a law according to which all members of this minority are to be exiled from its territory or the property of such inhabitants is to be confiscated for the benefit of the state or that the large agricultural estates of such inhabitants are to be turned over to the state or to be partitioned among other citizens: Now does the civil servant in this nation really commit a crime if he carries out this lawful order ? Is it really the duty of the official who is in charge of the execution of this law, or for that matter has he e v e n t h e r i g h t t o r e f u s e o b e d i e n c e t o t h e l a w a n d t o d e c l a r e t h a t i n h i s p e r s o n a l o p i n i o n t h e l a w c o n c e r n e d w a s a c r i m e a g a i n s t h u m a n i t y ? Would to-day in such a case any state grant its civil servants the authority to examine whether the promulgated law is contrary to the principles of humanity or to the fluctuating norms of international law? Which state would tolerate that its civil servants based upon this argument refuse the execution of a promulgated law?

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Or another example: Let us assume the l a w of a nation decrees that certain new weapons are to be introduce into the armed forces or that more war ships are to be built or that some preparations have to be made for war. Should an individual civil servant realy have the right to refuse the execution of the law, even perhaps to sabotage its execution and then to give the explanation that in his personal opinion concerning international law it involved the preparation of an a g g r e s s i v e war, consequently an international crime ?

The Tribunal will have to decide these legal problems. But Funk in his defense may point out the fact that according to his entire ideology and to his entire background it was especially difficult for him, to issue those decrees for execution, although he believed he was only doing his duty as a civil servant.

In this connection I wish to remind of F u n k ' s c i r c u l a r of 6th February 1939 (3498 PS., Trial Brief page 19), where he emphasizes to his officials that they had the duty to safeguard " i n e v e r y w a y a n u n o b j e c t i o n a b l e e x e c u t i o n " and where he mentally already declines

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the personal responsibility for these measures by expressly emphasizing: "To what extent and speed the authorities given by the Four Year's Plan are to be used will depend on the decisions made by me in accordance with the directives of the Plenipotentiary for the Four Year's Plan". This special reference to the legal decrees of the Four Years Plan which was authorized to promulgate laws, originated in the desire of the defendant to express formally and solemnly and to establish for the times to come that in issuing the decrees for the execution, he fell, in the last analysis victim to his obedience to the state, victim to his loyalty to the laws of the state to which he had sworn allegiance.

Especially in Funk's circular of 6 February 1939 (PS 3498) mentioned before, qualms of conscience are clearly expressed which had gripped Funk in those days, those qualms which, during his interrogation by an American officer on 22 October 1945 resulted in a complete nervous collapse so that Funk could not suppress his tears any more and told the interrogating officer: "Yes, I am guilty, I should have resigned at that time". These same qualms of conscience occupied the defendant during the entire trial and we remember that

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Funk in the session of 6 May 1946, when this point was discussed, was so deeply shaken, that he could hardly continue to talk and that he finally declared: "At this moment he fully realised that from here the disaster had started on its way until those horrible and frightful things which we have learned here and of parts of which he learned already during his imprisonment." He felt, as he said during his interrogation on 22 October 1945," a deep shame a n d a h e a v y g u i l t b e f o r e h i m s e l f and he still felt it to day in the same way; but he had put the will of the state, the laws of the state above his own feelings and his warning voice, for he as a civil servant was duty bound to the state. He felt all the more bound, as these legal measures were necessary first of all for the protection of the Jews in order to save them from being completely without any rights and from further despotism and force."

Funk still to-day feels that it was a t e r r i b l e t r a g e d y that just he of all persons was charged with these things, he who never said a spiteful word against a Jew but had wherever he could always worked for tolerance and equality even towards Jews.

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Funk, on his interrogation on October 22nd, 1945, said: "I am guilty", and it is not intended to investigate here, whether the defendant, when saying this thought in any way, of a c r i m i n a l or only of a m o r a l guilt which he saw in the fact that he remained in an office, which compelled him to execute laws which were incompatible with his own philosophy of life. Funk is no jurist and was, therefore, not in a position to decide for himself the complicated legal question, whether an official of state, which had been internationally acknowledged can be punished at all, when doing nothing else but executing laws, which had been passed in accordance with the laws of this state. He did not see any "guilt" of his in the fact that he had signed, in November 1938, the executive regulations, as this had been his duty as an official. Rather, he considered himself guilty because he had remained a member of the government, although he found the acts of terror which had occurred intolerable and abhorred them; he did not get into the "conflict of conscience", whereof he spoke when he was interrogated because he acted according to the laws which he considered as necessary under the then prevailing conditio but he got into such a conflict of conscience because he had not, in such a difficult situation, listened to the voice of his conscience and had not resigned his ministerial office. Surely, no material considerations prompted his decision to stay in office, in spite of his moral scruples; his renown as a journalist and his abilities in this respect would have made it easy for him to find another suitable position. Much is to be said for the opinion that the defendant was kept in office above all by the thought

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that his resignation would improve nothing, that on the contrary the administration would get still more radical under an unsuitable, fanatical successor, while he could hope, if staying in office, to alleviate much distress.

These considerations, which may have guided the defendant Funk in the first place, were certainly correct up to a certain point.

His secretary of state Dr. L a n d f r i e d at least has stated as witness, that further on too Funk time and again had serious misgivings concerning this action against the Jews and very strongly showed his disapproval of all excesses and infringements of law, committed by various government agencies in the course of execution. Funk could talk openly to his confidant Landfried, and he often complained to him that he had not had the power to prevent such excesses. But, as he said to Landfried: "We of the Ministry of Economy should take particular care that n o b o d y i s g e t t i n g u n w a r r a n t e d e n r i c h m e n t o u t o f t h e J e w s on the occasion of the arization of business firms, i.e of their transfer into non - Jewish hands." And ministerial councillor Kallus stated in his deposition of April 19th 1946 of the various measures which were taken at that time by Funk to protect the interests of Jewish business owners, and Kallus told us too, that Funk even personally endeavoured to ensure that his order were correctly carried out by subordinate authorities.

S e n s e o f d u t y on the one hand and h u m a n f e e l i n g on the other were the motives, accordingly, which let the defendant stay in office and brought him thus into a situation he is charged with to-day as being the result of criminal action.

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VI. SS - Gold deliveries to the Reichsbank and concentration camps.

It is really a particular tragedy in the life of the defendant Funk that he was not only condemned by fate, in the year 1938, to issue executive regulations of laws which he condemned inwardly and disapproved of as no other man, but that he got associated once more, in the year 1942, in a particularly terrible manner with the persecution of the Jews: I am thinking now of the depot of the SS at the Reichsbank, of a matter, for the elucidation of which a moving picture was produced of the steel safe of the Frankfurt branch of the Reichsbank and two witnesses were heard, Vice-president Emil Puhl and Reichsbank councillor Albert Thoms.

The defendant Funk had already been examined about this matter, at the preliminary proceedings on the occasion of his interrogation, on June 4th 1945 (cf. P.S. 2828); at that time, however, no details were disclosed to him, and Funk has then made the same statement as he did before this tribunal, viz. that he had to deal with the matter in question but a few times and shortly, and that he had not attached any importance to it. This is the reason too why he could, at first, not clearly remember those happenings any more. Accordingly, he did not know anything more about them than he had mentioned.

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Still he would have to expect that this matter would be brought up in the cross-examination, in course of the proceedings. And this was done in fact by the American prosecution on May 7th 1946, and the said prosecution has submitted an affidavit of the witness E m i l P u h l , which at first seemed to charge heavily the defendant Funk. Now it is remarkable that since the beginning of this trial the defendant Funk always actually referred to this witness P u h l for various points, and that he s e v e r a l t i m e s a s k e d for h i s h e a r i n g since December 1945. Measured by ordinary human standards, Funk would not have done so if he had had a bad conscience and if he must have reckoned with the possibility of his being accused in the most serious way by his own witness in the matter of those concentration camp stories. But the oral examination of the witness Emil P u h l at this tribunal showed beyond doubt that P u h l c o u l d n o t u p h o l d at all the originally incriminating statements of his affidavit, as far as the personality of Funk and his knowledge of the particulars of the deposits of the SS were concerned.

It is true that Funk, as he remembered after the hearing of P u h l (cf. on this point the rectification of his statement in the declaration of the defence counsel to the tribunal of June 17th, 1946) had been asked at the time, occasionally by the Reichsfuehrer SS H i m m l e r whether articles of value could be deposited in the strong rooms of the Reichsbank, which had been seized by the SS in the Eastern territories.

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This question of Himmler's was at that time confirmed by Funk who also told Himmler that he should delegate somebody in order to discuss the matter with Vicepresident P u h l and settle it. Himmler at that time declared that Gruppenfuehrer P o h l could do this and that the latter would get in touch with Vicepresident Puhl. That was all that Funk had discussed with Reich Leader SS Himmler and occasionally he also mentioned this to his Vicepresident Puhl because Puhl was actually directing the business of the Reich Bank and was concerned with this affair.

Nothing extraordinary was contained nor recognizable for Funk in this question of Reich Leader SS Himmler because, as far as Funk knew the SS was at the time in charge of the entire police service in the occupied territories in the East; for that reason it often had to confiscate valuables just as the ordinary police had done in the interior country. Moreover all gold coins, foreign currency etc. in the occupied territories of the East had to be t u r n e d i n a c c o r - d i n g t o t h e l a w and these deliveries in the East Territories were naturally made to the SS because, no other state offices there were equipped for that purpose. Funk also knew that the concentration camps were under the direction of the SS and thought that the valuables the SS were to deposit with the Reich Bank for safe-keeping

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belonged very probably to that category of valuables which the whole population was obliged to deliver.

Finally as it is known the SS always participated in the combats, just as the German army; just as the latter the SS had collected so-called booty in the abandoned and destroyed towns of the east and had delivered it to the Reich. Therefore there was nothing extraordinary for Funk in the fact that the SS possessed gold and foreign currency and turned it in, in a regular way.

Essential in this entire matter is the question, w h e t h e r F u n k k n e w o r s a w t h a t t h e r e w e r e , a m o n g t h e o b j e c t s d e l i v e r e d b y t h e S S , g o l d f r a m e s o f s p e c t a c l e s , g o l d t e e t h , a n d s i m i l a r o b j e c t s i n e x t r a o r d i n a r y q u a n t i t i e s , which did not fall into the hands of the SS by means of legal confiscations but by criminal acts.

If it could be proven that defendant Funk saw such objects in the deposit of the SS these objects should naturally have roused his suspicion. But we heard from the witness P u h l in all certainty that defendant Funk had n o knowledge of this, yes, also that the Vicepresident himself did not know any particulars about it.

In any case Funk never saw what particular gold objects and what quantities were delivered for the SS.

Now it was stated against Funk that he had several times entered the vaults of the Berlin Reich Bank and one felt entitled to the conclusion therefrom that he could not have helped seeing what objects had been delivered by the SS. This conclusion is obviously wrong, because the evidence shows that during the entire war Funk went to the vaults of the Reich Bank only very few times in order to show these vaults and the bullion of the Reich-Bank stored therein to visitors, especially to foreign guests. But during these few visits he never saw the deposit of the SS. He never observed what in particular the SS had deposited in his bank. This is established without doubt, not only by the deposition of defendant Funk himself, but also by the testimony of Vicepresident Puhl and the Councillor of the Reich Bank Thoms. This, certainly unsuspect prosecution witness who offered himself as a witness declared under oath that the valuables were delivered by the SS in locked trunks, boxes and bags and were stored in these containers and that Funk was n e v e r present in the vaults, when, the contents of an individual box or trunk were sorted out by the employees of the bank.

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Thoms, who supervised the vaults, never saw defendant Funk there ! Therefore Funk neither had knowledge of the amount that the deliveries of the SS gradually had formed nor did he know that the depot contained jewelery, pearls and precious stones and spectacle frames and gold teeth. A l l t h a t , h e n e v e r s a w a n d n o n e o f h i s o f f i c i a l s e v e r r e p o r t e d t o h i m a b o u t t h e s e t h i n g s .

Now it is the opinion of the prosecution that Funk, being president of the Reich Bank, surely must have known what was kept in the vaults of his bank; but also this conclusion is evidently false and does not take into consideration the actual conditions in a central bank of issue. Funk, who besides was Reich Minister for the Economy, had in his position of a president of the Reich Bank, no occasion whatever to look after a single deposit, even if it happened to belong to the SS. As a president of the Reich Bank he did not look after any deposits of other clients of his bank as this was not his task. He only once, owing to an inquiry of his vicepresident Puhl, asked Reich Fuehrer SS Himmler, whether the values deposited by the SS at the Reich Bank could be realised i.e. in the legal course of business of the Reich Bank. Himmler answered in the positive and Funk passed this answer on to his Vicepresident Puhl.

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But in this matter he only thought of gold coins and foreign currency, that is to say of such values which quite generally in the German Reich had to be turned in to the Reich Bank and which were and had to be realized by the latter. N e v e r did the idea occur to Funk that the deposit contained gold-teeth or similar objects originating from criminal actions in concentration camps. He heard of this, with great horror, but during the trial.

The only part of the statement of witness Puhl that yet remained in a way suspect, was the question of secrecy: Vicepresident Puhl as a witness declared in the beginning that Funk had told him: the matter of the deposits of the SS should be kept strictly secret. F u n k on the other hand always denied this very decidedly and declared under oath that he never talked with Puhl about such secrecy at all. N o w a t f i r s t s i g h t o n e s t a t e m e n t w a s p i t t e d a g a i n s t t h e o t h e r . Vicepresident Puhl's statements referring to this point seemed slightly contradictory from the beginning: At one time he said that this secrecy had not been anything extraordinary because, after all, secrecy applies to every thing that occurs in a bank; answering a special question Puhl stated repeatedly that he did not notice whether the defendant Funk had spoken of secrecy.

When, however, the affidavit of the witness Thoms of 8 May 1945 was read and pointed out to the witness Puhl, Puhl finally deposited upon oath on 15 May 1946, that it was clearly evident therefrom, that the desire for secrecy emanated from the SS. The SS made a point of having this business treated with secrecy, the SS had been the originator of the obligation for secrecy. Thus reads the literal wording of the end of the statement of the witness Puhl to which he swore and at the conclusion of which he again confirmed that the obligation for secrecy was desired and imposed by the SS.

Herewith the initial contradiction, regarding this point between the statements of the defendant Funk and those of the witness Puhl was altogether accounted for; Puhl himself no longer maintained his original assertion that it was Funk who had ordered the maintenance of secrecy with regard to the SS deposit. Thus we must assume that the statement of the defendant Funk is corrdct also in this point and deserves preference; for he had declared from the very beginning and under oath that he himself knew nothing of a secrecy and that he had never spoken of such a secrecy to Puhl. Moreover there was no reason for Funk to talk to Puhl about a special secrecy since Funk ostensibly was of the opinion that the valuables involved were of such nature

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as made their confiscation and turning in mandatory and which belonged within the regular lawful business sphere of the Reichsbank, regardless of whether these articles subject to confiscation were the property of an inmate of a concentration camp or of a free person.

It was never clarified by the evidence submitted, why the SS on their part stressed the maintainance of Secrecy towards Vice President Puhl and why, furthermore, the SS opened a deposit in the name of Melmer instead of in the name of the SS, and the prosecution on their part did not attach any importance to clarifying this point. At any rate the demand of the SS for secrecy evidently did not strike Vice President Puhl as unusual, just as little as it did the witness Thoms who confirmed the fact that this secrecy was nothing unusual . One fact however remains significant, namely, that before the numerous personnel of the Reichsbank no secrecy was maintained about the nature of the individual articles; on the contrary, that very personnel of the Reichsbank was entrusted by Puhl with sorting the turned in valuables and their conversion into money at the pawn shop. Dozens of Reichsbank officials who regularily entered the vaults were in a position to see the individual articles there. The Reich Central Pay-Office (Reichshauptkasse) quite openly settled accounts for the conversion of valuables into money w i t h t h e R e i c h M i n i s t r y o f F i n a n c e in a regular routine manner.

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Funk, still today, does not know whether and to what extent agreements for settling accounts with the Reich had been reached between the Finance Minister and SS Reichsfuehrer Himmler. He was never interested in it nor did it concern him.

All these facts proven by the evidence, conclusively emphasize that Funk personally did not know of these matters and that Vicepresident Puhl and Reichsbankrat Thoms thought nothing bad about them even though Thoms should have seen of what nature the deposits were.

For this reason, there is no longer a need to examine the obvious question, whether the initial statements of Puhl with regard to the deposits of the SS were not from the beginning to be received with a certain skepticism, as he ostensibly had the understandable urge- at least in his written affidavit- t o s h i f t r e s p o n s i b i l i t y u p o n t h e s h o u l d e r s o f h i s P r e s i d e n t F u n k, in order to escape his own responsibility for the unpleasant facts of the case, when during his detention he was told that the gold objects of the SS consisted for the greater part of spectacle frames and gold teeth taken away from victims of concentration camps. Originally not even Puhl seems to have thought bad about the whole matter. For him the matter

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was an ordinary business transaction of the Reichsbank for the account of the Reich, which he dealt with in the same manner as he dealt with objects of gold and foreign currency that had been seized by the Customs Investigation Office or the Office of control for Foreign currency or any other State authority. Whatever is the opinion the responsibility of Vice-President Puhl, all these cases lie o u t s i d e a n y j u r i s d i c t i o n o f t h e d e f e n d a n t F u n k . In the course of the following period Funk had only two or three short and accidental conversations with Puhl regarding these gold deposits with a view of using the turned in gold coins and foreign currency. Otherwise Funk did not concern himself at all with the matter. He knew less about it than Puhl and it is not without significance that Puhl upon oath declared that he (Puhl) would have never permitted to have these objects of gold acquired by the SS brought to the vaults of the Reichsbank, had he had the slightest notion of the fact that they were taken from victims of concentration camps under criminal circumstances. If Puhl could not know or guess this, then Funk could have known even less about it, and the initial statement of Puhl, which, in effect, said that the objects of gold were accepted by Funk for the Reichsbank i n t e n t i o n a l l y and that they were made use of with the aid of the personnel of the Reichsbank, was at least a statement by Puhl g r o s s l y m i s l e a d i n g t h e p r o s e c u t i o n. He, later on in captivity, when he learned of the true connections must surely have had the same compunctions as Funk, however innocent the latter was in the case.

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Puhl, in the end, stated upon oath that even he would not have stood for such transactions and he would have brought the matter to the attention of the directorate of the Reichsbank as well as to the attention of President Funk, had he known that the valuables were taken from victims of concentration camps and if he had been informed about the nature of these valuables.

I therefore come to the following conclusion: Certainly the Reichsbank transacted business for the account of the Reich, the nature of which originated from criminal acts of the SS; Funk, however, knew nothing of this. He would not have tolerated such transactions had he known the true circumstances. Therefore, he cannot be made legally responsible for this.

The same applies with regard to credits of the Reichsbank for business agencies of the SS. The witness Puhl, in his written affidavit of 3 May 1946, first gave an entirely wrong picture also of this matter: For he stated that credits of 10 to 12 million Reichsmark placed at the disposal of the Cold-discountbank upon instruction of the defendant Funk were used for financing production in SS factories by means of labour of concentration camps.

In his oral examination as witness, Puhl then was asked, whether Funk had any knowledge as to whether persons from concentration camps were engaged in these factories at all.

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Thereat, Puhl declared literally : " I am inclined to assume this, but I am unable to know it." Therefore, he was not able to give any definite evidence concerning Funk's knowledge. However, Funk's own statement in this matter is quite clear and convincing; it amounted to this, that he knew, indeed, of the credit request of the SS, that he even granted it, but that he knew nothing about the nature of the SS enterprises concerned and about the people working therein. Funk stated this on his oath. This credit deal, which by the way occurred, about two years b e f o r e the matter of the SS gold deposit, accordingly charges neither the defendant Funk, nor the witness Puhl; neither of them knew at that time - 1940 - anything about the conditions in the concentration camps, both rather learned about them only much later, viz. in the course of this trial, and the defendant Funk never knew that p e r s o n s f r o m t h e c o n c e n t r a t i o n c a m p s w e r e w o r k i n g i n t h e S S f a c t o r i e s m e n t i o n e d .

In this connection it appears necessary to consider the question whether F u n k e v e r v i s i t e d a c o n c e n t r a t i o n c a m p ; the witness Dr. B l a h a , who was examined here, stated that once Funk was in D a c h a in the first half of 1944. This visit was stated to have been made as a sequel to a conference of the minister of finance in Berchtesgaden or in some other place of this region, and in which Funk participated. But the witness Dr. Blaha himself did not at that time see the defendant Funk in Dachau, but only heard from other camp inmates that

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on the occasion of an important visit to the camp, the Reich Minister of the Economy Funk, too, had been present. From the beginning, Funk energetically contested this. He stated this on his oath, and the affidavit made by his permanent companion Dr. S c h w e d l e r , Doc.Book Funk 13 and submitted to you, clearly proves that Funk never was in a concentration camp; Dr. Schwedler is in a position to know this, as he had at that time been the permanent companion of the defendant and had from day to day known where Funk stayed. In fact, Funk never was a minister of finance, and never took part in a conference of ministers of finance. Accordingly it is beyond any doubt that what the witness Dr. Blaha was able to tell here purely from hearsay is based on false information or on a confusion with another visitor, and that could all the more have been the case because Funk was rather unknown to the public. The result, therefore, is: Funk never visited a concentration camp and never came to know the conditions existing therein.

It is true that Funk does not by this statement want, to assert that he did not know anything at all about the existence of such concentration camps. Just as almost any German, Funk knew, of course, that there were concentration camps in Germany after 1933, just as he knew that there were penitentiaries, prisons and other penal institutions in Germany.

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But what remained unknown to him, was the very large number of such concentration camps and of their inmates, amounting to hundreds of thousands, even millions. Unknown, to him were also the countless atrocities committed in these camps, atrocities made known only in this trial; in particular, Funk only heard during this trial that there were even extermination camps, which served to murder millions of Jews. Funk had no knowledge of this, he stated it on his oath and it appears quite credible, as one of the most important results of this trial consists in the evidence that the German people, on the whole, did not know about the conditions in the concentration camps and about their immense number, but that, on the contrary those conditions were held secret in such a cunning and cruel way that even the highest officials of the Reich did not learn anything about them.

Herewith defense have presented their view on that part of the indictment which, had it been true, would have imputed the man Funk in the most serious and terrible way. One may think as one pleases about acts of violence during a political and economic struggle, especially in stormy revolutionary periods; according to the opinion of the defendant Funk, there cannot be any dissent of view on one point , viz. concerning the atrocities in concentration camp and how they were committed for years, especially against the Jewish population: Anyone who participated in such unheard of atrocities, should atone for it in the most rigorous way, according to the opinion of the entire German people just the same.

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This is the point of view of the defendant Funk, too, which he expressed here, when on May 6th 1946 answering the American prosecutor, that as a man and as a German he was feeling a h e a v y g u i l t and a d e e p s h a m e for what Germans perpetrated on millions of wretched people.

I am now at the end of the consideration of the Funk case. Your task as judges will be to find a <u>just</u> sentence for the defendant Funk too, a sentence which does not make him atone for other people's guilt -, a guilt which he could not prevent, which he did not even know,- but which only establishes the degree of his <u>own</u> criminal guilt. A sentence which is valid not only for <u>to-day</u> but which will be recognized as just also in the future, at a time when we shall have gained the necessary temporal distance to those terrible events and shall be considering those things without passion, like happenings of a remote historical period. A sentence which not only gives satisfaction to the nation which you are representing, but which will be perceived as just and wise by the German people as a whole. A sentence which does not only destroy and take revenge and sow hate for the future, but which makes possible and facilitates the re-ascending of the German people towards a happier future of human dignity and of charity, of equality and of peace.